

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES BRANCH,

Plaintiff,

v.

9:06-CV-0846
(GTS/DRH)

GARY GREENE, Superintendent; CHARRON,
Correction Officer; JOHN DOE I, Sergeant;
JOHN DOE II, Sergeant; JOHN DOE III, Correction
Officer; and JOHN DOE IV, Correction Officer,

Defendants.

APPEARANCES:

OF COUNSEL:

JAMES BRANCH

Plaintiff, *Pro Se*

Rescue Mission

212 Rutger Street

Utica, New York 13501

HON. ANDREW M. CUOMO

Attorney General for the State of New York

Attorney for Defendants

The Capitol

Albany, New York 12224-0341

DOUGLAS J. GOGLIA, ESQ.

Assistant Attorney General

HON. GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court in this *pro se* prisoner civil rights action are Defendant Greene's motion for summary judgment (Dkt. No. 46), and United States Magistrate Judge David R. Homer's Report-Recommendation that Defendant Greene's motion be granted (Dkt. No. 53). Plaintiff did not submit a response to the motion for summary judgment nor file any objections to the Report-Recommendation. For the reasons set forth below, the Report-Recommendation is accepted and Defendant Greene's motion is granted.

I. BACKGROUND

On July 10, 2006, Plaintiff filed his Complaint in this action asserting claims against (1) Gary Greene, a Superintendent at Great Meadow Correctional Facility, (2) Robert Charron, a Correction Officer at Great Meadow Correctional Facility, and (3) four unidentified individuals also employed at Great Meadow Correctional Facility ("Defendants"). Generally in his Complaint, Plaintiff alleges that his rights under the First, Eighth and Fourteenth Amendments were violated when Defendant Charron refused to escort Plaintiff to medical call-outs, and Defendants subjected him to an alleged retaliatory assault for filing institutional grievances about that refusal.

On July 21, 2008, Defendant Greene filed a motion for summary judgment seeking dismissal of all claims against him for lack of personal involvement. Plaintiff did not file an opposition to the motion, despite being granted an extension of time in which to do so.

On January 21, 2008, Magistrate Judge Homer issued a Report-Recommendation recommending that Defendant Greene's motion be granted, and that Plaintiff's Complaint be dismissed as against Defendant Greene. (Dkt. No. 53.) In addition, Magistrate Judge Homer recommended that Plaintiff's claims against the four John Doe Defendants be dismissed without prejudice because the time in which to effect service pursuant to Fed. R. Civ. P. Rule 4(m) and N.D.N.Y. L.R. 4.1(b) has expired. Familiarity with the grounds of Magistrate Judge Homer's Report-Recommendation is assumed in this Decision and Order.

II. ANALYSIS

For the sake of brevity, the Court will not recite the well-known legal standard of clear error that governs the review of a magistrate judge's report-recommendation to which a party has made no objection, pursuant to 28 U.S.C. § 636(b)(1)(C). Rather, the Court will merely refer the

parties to its decision in *Vigliotti v. Daly*, 05-CV-1320, 2008 WL 5423453, at *1 (N.D.N.Y. Dec. 30, 2008 (Suddaby, J.). After carefully reviewing all of the papers in this action, including Magistrate Judge Homer's Report-Recommendation, the Court concludes that the Report-Recommendation is not clearly erroneous. (Dkt. No. 53.) Magistrate Judge Homer employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court adopts the Report-Recommendation for the reasons stated therein.¹

ACCORDINGLY, it is

ORDERED that Magistrate Judge Homer's Report-Recommendation (Dkt. No. 53) is **ADOPTED**; and it is further

ORDERED that Defendant Greene's Motion for Summary Judgment (Dkt. No. 46) is **GRANTED**, and that judgment be entered in favor of Defendant Greene as to all claims against him; and it is further

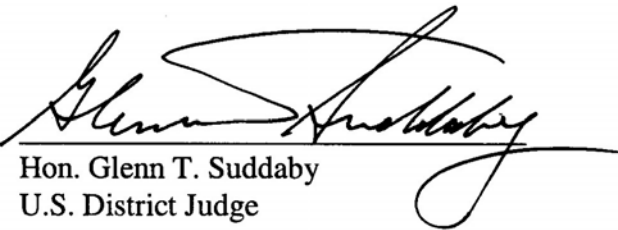
ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** without prejudice as to the four John Doe defendants for failure to name defendants and to effect proper service; and it is further

ORDERED that Pro Bono Counsel be appointed for the Plaintiff for purposes of trial only; any appeal shall remain the responsibility of the plaintiff alone unless a motion for appointment of counsel for an appeal is granted; and it is further

¹ The Court notes that the Report-Recommendation would survive even a *de novo* review.

ORDERED that the Clerk of the Court shall serve a copy of this Order upon all parties and Magistrate Judge Homer.

Dated: February 11, 2009
Syracuse, New York



Hon. Glenn T. Suddaby
U.S. District Judge